



JTPA

Number: D95-22

Serving the People of California

DIRECTIVE

Date: December 7, 1995

69:59:va

TO: SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

SUBJECT: GOVERNOR'S BIENNIAL REVIEW--PIC CERTIFICATION,
APPOINTMENT OF PIC CHAIRPERSON AND PIC MEMBERSHIP

EXECUTIVE SUMMARY:

Purpose:

This Directive: 1) transmits the guidelines for the Governor's biennial review of Private Industry Council (PIC) certification, 2) implements Assembly Bill 1847 (Chapter 731, Statutes of 1993) regarding appointment of the PIC chairperson, and 3) consolidates information provided in previous directives regarding PIC membership requirements, and filling vacancies.

Scope:

This guidance is applicable to all PICs, regardless of incorporation status.

Effective Date:

This Directive is effective upon date of issuance.

REFERENCES:

Job Training Partnership Act (JTPA) Section 102
JTPA Final Rule at 20 CFR Section 628.410
California Unemployment Insurance Code (CUIC) Sections 15030 to 15034
California Government Code Sections 54970 through 54975

STATE-IMPOSED REQUIREMENTS:

This Directive contains state-imposed requirements. These are printed in ***bold, italic*** type.

FILING INSTRUCTIONS:

This Directive supersedes JTPA Directive 86-9, issued October 2, 1986; JTPA Directive 89-1, issued January 31, 1989; and JTPA Directive 93-5, issued April 29, 1993.

BACKGROUND:

1. The 1992 JTPA amendments introduced new requirements regarding PIC membership composition. Additionally, Section 628.410 of the JTPA Interim Final Rule required the Governor to biennially recertify PICs one year prior to the submission of the two year Job Training Plan. The PICs were last recertified June 30, 1993, in accordance with guidance provided in JTPA Directive 93-5.

The JTPA Final Rule, issued September 2, 1994, revised this requirement, in response to comments from the public. Section 628.410 now requires that the Governor review the certification biennially, one year prior to the effective date of the two year job training plan. The Department of Labor, in the preamble to the final rule states that the review process is intended to afford the Governor a continuing role in ensuring that the PIC is an effective local policy making body. The timing for the certification review is intended to ensure that the PIC is appropriately constituted and certified in adequate time for preparation of the two year Job Training Plan.

2. With regard to selection of the chairperson and other officers of the PIC, federal law, in JTPA Section 102(b), requires only that the chairman of the PIC be selected from among members of the council who are representatives of the private sector. State law, in Section 15033 of the CUIIC, imposes additional requirements. Prior to January 1, 1994, it specified that: "The council shall elect annually from among its membership a chairman, vice chairman and any other officers as the council may deem necessary." Assembly Bill 1847, which became effective January 1, 1994, revised statutory language related to appointment or elections of PIC officers so that it aligns with the JTPA two year planning period. It also adds an additional requirement that the PIC chairperson must be appointed by the Chief Elected Officials (CEO) for the Service Delivery Area (SDA). The new language, effective January 1, 1994, reads as follows:

"The chief elected official or officials for the service delivery area shall, every two years following the Governor's biennial certification of the private industry council, appoint a chairperson from among the private sector members on the private industry council. The private industry council may appoint other officers as it deems necessary."

3. The Maddy Local Appointive List Act of 1975 (Government Code Sections 54970 through 54975) requires local legislative bodies which are responsible for making appointments to local boards, commissions, and councils, to publish an annual list of appointive vacancies for the coming year. The public notice must include information on the qualifications and requirements for each position in order to allow the public the opportunity to apply and compete for appointment to such positions. The Maddy Act also applies to the filling of all private sector, community based, and some public sector PIC vacancies. It applies to all PICs, including consortia and PICs that are incorporated as nonprofit entities. Please note that this rule does not apply in cases where a mandated PIC member is representing and appointed by a state agency (for example, the Employment

Development Department for the public employment service). These public notice requirements also apply to any unscheduled PIC vacancies.

POLICY AND PROCEDURES:

Review of PIC Certification:

All PICs' certification must be reviewed in the year prior to the effective date of the two year Job Training Plan. In order to achieve this, SDAs must submit the necessary documentation required by the JTPA final rule, as described in the attachment. Within 30 days of the date of submission of the required documentation, SDAs will receive a response regarding the appropriateness of the PIC composition and the nomination process. If problems are identified, the Job Training Partnership Division (JTPD) Program Managers will work with the SDA to resolve any issues prior to the effective date of the new Program Year. If the SDA documentation is approved, JTPD will send written confirmation specifying that approval is effective immediately.

Appointment of PIC Chairperson:

The CEO(s) of the SDA must appoint or reappoint a PIC chairperson, from the members representing the private sector, following the review of the PIC certification, but no later than the date of submission of the two year Job Training Plan. The appointment/reappointment should follow any duly authorized procedures, and be consistent with the terms of the PIC/CEO Agreement.

PIC Membership Composition:

1. The majority of the PIC members must be from the private sector, who shall be owners of business, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility. The private sector representatives shall be selected from among individuals nominated by general purpose business organizations, after consulting with, and receiving recommendations from other business organizations in the SDA. The slate of nominations shall be at least 150 percent of the number of individuals to be appointed and shall reasonably represent the industrial and demographic composition of the business community. Whenever possible at least one-half of such business and industry representatives shall be representatives of small business, including minority business.

State law, in Section 15031(d) of the CUIC specifies that no member representing private industry may be represented by an alternate at meetings of the PIC.

2. At least 15 percent of the PIC must be comprised of representatives of organized labor and community based organizations. The labor representatives shall be selected from individuals recommended by state and local labor federations, except that if the state or local labor federation fails to nominate a sufficient number of individuals to meet the requirements, individual workers may be included on the council to complete the labor representation. A labor federation

is defined at 20 CFR 628.410(a)(3) as "an alliance of two or more organized labor unions for the purpose of mutual support and action. An example of a recognized labor federation is the AFL-CIO."

3. The PIC membership must include at least one representative of each of the following:
 - Education agencies (which shall be representative of all education agencies in the SDA). The education representatives shall be selected from among individuals nominated by regional or local educational agencies, vocational education institutions, institutions of higher education (including entities offering adult education), or general organizations of such institutions within the SDA.
 - Vocational rehabilitation agencies.
 - Public assistance agencies.
 - Economic development agencies.
 - Public employment service.

Procedures for Filling Membership Vacancies:

Both JTPA and the Family Economic Security Act (FESA) require that PIC members be appointed for fixed and staggered terms, may serve until their successors are appointed, and that vacancies be filled in the same manner as the original appointments. These requirements are contained in JTPA Section 102(f) and FESA Sections 15031(c) and (e) of the CUIC.

A PIC vacancy exists whenever one or more of the following situations occur:

- ***a member's fixed term of appointment expires;***
- ***a member's official resignation is accepted by the PIC;***
- ***a member dies;***
- ***a member is removed for cause in accordance with locally approved PIC constitutions and/or by-laws; or***
- ***a new, duly-approved membership slot is established.***

Vacancies must be filled within 60 days, pursuant to CUIC Section 15031(e). The CEO(s) are responsible for initiating PIC appointment or reappointment procedures in anticipation of scheduled vacancies, including those resulting from expired terms of members who desire to continue participation on the PIC, and immediately upon notification of any unscheduled PIC vacancies which require CEO actions.

The filling of PIC vacancies must comply with all of the applicable provisions of JTPA, CUIC/FESA, and the Maddy Act. In order to accomplish this, the following procedures will apply:

- a. In compliance with the Maddy Act, public notice of all PIC membership vacancies will include information about the specific qualifications and conditions of appointment that apply to each vacancy.*
- b. A final slate of nominees may be established only after public notice of the vacancy has occurred. Provisions for maintaining a pool of private sector nominees is specified in item c. below.*
- c. A slate of private sector nominees must contain at least 150 percent of the number of individuals to be appointed (JTPA Section 102(c)(1)(A)). The PIC, CEO, or SDA administrative entity may maintain a permanent 150 percent slate of private nominees. Incumbent private sector PIC members may be retained on such a slate of nominees for up to five years without formal confirmation by the general purpose business organizations that initially nominated them.*
- d. An incumbent PIC member whose term has expired may wish to be considered for reappointment. In this case, the same procedures are to be followed as for other vacancies. In the case of private sector PIC members, reappointment of the same member may be made if the provisions of the Maddy Act have been followed and if the individual is a current nominee on a 150 percent slate of nominees.*
- e. Formal action may be taken at any time by the general purpose business organization to withdraw a nomination. This action will preclude use of the "automatic" renomination process for private sector incumbents whose names have been withdrawn.*
- f. Since PIC members are appointed for "fixed terms," such withdrawal of nomination will not result in termination of a PIC membership before completion of the "fixed term."*

ACTION:

- 1. Review PIC membership, process for filling vacancies, and appointment of the PIC chairperson to assure that they are in conformance with the JTPA, the final regulations and the CUIC.
- 2. Please see attachment for required documentation for certification review.

INQUIRIES:

Please direct any inquiries regarding this Directive to your Program Manager or Georganne Pintar, Manager of the Policy Unit, at (916) 654-7611.

/S/ VICKI J. JOHNSRUD
Acting Chief

Attachment

Required Documentation
for
Certification Review

The Job Training Partnership Act (JTPA) Final Rule, Section 628.410, requires that the following information be submitted to the Governor for review. Please submit this information by January 19, 1996.

- a written description of the PIC composition, which shall be consistent with Section 102(a), (b), (c), and (d) of the Act and shall include the names of individual PIC members and their qualifications;
- a description of the nomination process; and
- the written agreement(s) among the appropriate Chief Elected Official(s) and the PIC, including procedures for the development of the SDA Job Training Plan and the selection of the grant recipient and administrative entity.

In order to ensure that the requirements of the CUIC Section 15033 are met, please submit the following:

- Assurances that the PIC chairperson will be duly appointed/reappointed by the Chief Elected Official(s) of the SDA. The appointment/reappointment should follow any duly authorized procedures, and be consistent with the terms of the PIC/CEO agreement. This should be submitted after the Governor's review of certification, but not later than the date of submission of the Job Training Plan for Program Years 1996-98.

Mail all of the information listed to your Program Manager using the following address:

Program Management Section
Job Training Partnership Division, MIC 69-1
P.O. Box 826880
Sacramento, CA 94280-0001